

The Early History of Iowa (pt. 6)

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ISSN 0003-4827

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Recommended Citation

The Annals of Iowa, 6(4) (Oct. 1868): 270-283

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effort failing, Lieut. Crabtree fired a shell into the house which caused a considerable number of rebels to evacuate the premises. The remaining houses were shelled and the enemy fled in all directions. An insolent crowd was observed below on a point of rocks, sheltered by a clump of trees. These would shout "Come over, you Black Republicans, if you dare!" Our men replied "Bring your boat across and we'll go over!" Lieut. Crabtree sent a shell into the midst of this group, doing great damage. Men were seen without heads and arms, groans were heard, and the voice of one in great distress, crying "O Boys!" One fellow several times left his shelter behind a tree, and endeavored to obtain his horse, tied near the river. The whizzing of bullets would soon send him back to his shelter, and finally a shell caused him to disappear altogether. He was the last rebel visible. The river being too much swollen to cross, the party returned to the common road. Col. McCrillis then struck across the country to the vicinity of Rockbridge, having been gone on the expedition seven or eight days. The remains of Lieut. Heacock were immersed in charcoal and conveyed to Vera Cruz, Mo., where they were buried on a high ridge, the grave being marked.

The crossing of White River by the army at Forsyth was found to be impracticable, and a movement still further to the east was determined. A detachment of the 6th Mo. Cavalry, under Col. Clark Wright, was left as a garrison and for scouting purposes at Forsyth.

THE EARLY HISTORY OF IOWA.

BY CHARLES NEGUS.

(Continued from page 179.)

THE HALF-BREED LANDS.

After the United States acquired the Louisiana purchase from France, and the former government had taken possession of the country, several persons who went into the Indian country as traders, or in some other way connected with the Indian agencies, took to themselves squaws for wives, and had children which were generally designated by the name of "half-breeds."

These children, as they grew up, not fully adopting the habits of Indian life, were cared for by their nation in this treaty with the United States. In a treaty made on the 4th of August, 1824, by William Clark, the United States Indian Agent, residing at St. Louis, with the Indians, the following stipulations were made :

"The Sac and Fox tribes as a nation of Indians, by their deputies in council assembled, agree to sell unto the United States, all the lands within the limits of the State of Missouri, which are situated, lying and being between the Mississippi and the Missouri rivers, and a line running from the Missouri at the entrance of the Kansas river north one hundred miles, to the north-west corner of the State of Missouri, and from thence east to the Mississippi: It being understood that the small tract of land lying between the Mississippi and the Des Moines is intended for the use of the half-breeds belonging to the Sac and Fox nation; they holding it, however, by the same title, and in same manner, that other Indian titles are held."

This reservation contained one hundred and thirteen thousand acres, lying in the south part of Lee county, and it embraced some of the most valuable lands in the State.

After the Black Hawk purchase, and the surrounding country became settled, the whites were very anxious to acquire and settle these lands. Some ten years after the reservation of this tract of land to the half-breeds, when the Indians had ceded their contiguous lands, and with them had migrated many half-breeds, leaving a few females who had married white men, and a few drunken vagrants to annoy the whites who were beginning to occupy the half-breed tract, as well as the ceded lands, and when no semblance of a half-breed community existed, Congress in view of those circumstances, on the 13th of June, 1834, passed an act releasing to the half-breeds the "fee in reservation and the right of pre-emption, severed their joint tenancy, invested them individually, their heirs and assigns, as tenants in common, with the allodial fee simple, and prescribed the rules of alienation and descent, which were to be in accordance with the laws of Missouri, the same as any other citizen of that State."

Soon after the half-breeds were permitted to dispose of their lands, a great many persons became interested in this tract, by purchases from different half-breeds. Among others were Joshua Aikin, Isaac Galland, Samuel Marsh, Benjamin F. Lee, William E. Lee, George P. Shipman, Henry Seymour, Edward C. Delavan, and Erastus Corning.

These gentlemen formed themselves into a company, got an act of the Legislature passed for their special benefit, and on the 22d of October, 1836, entered into articles of association. The articles of association set forth that their object was to purchase a part of certain lands, situated between the Des Moines and Mississippi rivers, in Lee county, known as "the half-breed tract." And "after setting forth the nature of the tenure by which the parties were to hold the lands purchased, the extent of the investment, of capital, &c., in order the better to enable them to manage the property, &c., among other things it was provided that the title to all lands purchased for the use of the company should be conveyed to and vested in trustees, viz.: Joshua Aikin, Isaac Galland, Samuel Marsh, William E. Lee, and Edward C. Delavan, as joint tenants in common, in trust for the persons and parties interested therein.

The proportions in interest of each party were fixed; and in the three principal divisions of the agreement were set forth the powers and duties of the trustees in the following terms:

"And the parties hereunto covenant and agree, that the said trustees or a majority of them, shall have power, and it shall be their duty: First, to cause the title to said lands and property to be thoroughly examined, and established in such form of proceedings as they may be advised to be proper, to protect the interests against any loss or question on account thereof. Second, to cause the land purchased to be surveyed, so that the exact quantity of land acquired by the parties hereto, by the purchases already made, or hereafter to be made, as herein provided, shall be ascertained."

And the articles went on, and directed the trustees to lay off the lands into towns, cities, &c. And they were author-

ized to sell the lands, make all contracts necessary for the company, appoint attorneys, &c.

This company became extensive owners of the half-breed tract, for out of the one hundred and one shares into which the tract was divided, they were the owners of forty-one shares.

As the treaty making this reservation to the half-breeds of the Sac and Fox nations, did not designate the number or names of the parties who were embraced in the reserve, it became a disputed question as to who were the rightful owners of the land, and whether those who had made purchases had got good titles, and if so how much of this tract of land they were entitled to by their purchase. To settle these disputed rights, on the 16th of January, 1838, there was an act passed by the Wisconsin Legislature then sitting at Burlington (now Iowa), "for the purpose of settling the rights of certain claimants to land in the south part of Lee county," which provided that all persons claiming an interest in these lands should file with the clerk of the District Court of Lee county, within one year from the passage of this act, a written notice of their respective claims, designating the half-breed under whom they respectively claimed, which notice was to be accompanied with a copy of all their deeds and title papers relating to the lands which they claimed.

Edward Johnstone, Thomas S. Wilson and David Brigham were appointed commissioners for the purpose of taking and receiving the testimony concerning the validity of the claims presented, who, before entering upon the discharge of their commission, were to take an oath for the faithful performance of their duties, and were to meet at Montröse, in Lee county, on the first Monday of May, 1838; at which time and place they were to investigate the several claims in the order in which they were filed in the clerk's office, and the clerk was required to deliver to the commissioners all papers filed in his office.

The commissioners were required to make a report to the District Court, stating the number and names of the half-

breeds originally entitled to the lands, and the names of the owners at the time of making the report, with the proportions to which they were respectively entitled, and the name of the half-breed under whom each claimed, together with the evidence upon which they found their report.

After filing this report with the District Court, there was to be public notice given for sixty days, and if there was no exceptions taken to the report of the commissioners, at the next term of the District Court there was to be a judgment rendered in favor of the claimants, for the amount to which they appeared to be entitled by the report. If any person, claiming any interest in these lands, did not file his claim with the clerk of the court within one year from the passage of the act, then such claim was to be forever barred; unless it should appear that only a portion of the interest, belonging to some half-breed, had been sold, then the remainder of such half-breed's interest should be considered valid, and the proportion, belonging to such half-breed, was to be retained by the court, to be investigated under its direction, and to be paid over to such half-breeds as might at any time thereafter establish their claim.

This act also provided, that after judgment should be given the lands should be sold, and appointed John Walsh, of St. Louis, Jeremiah Smith and Antoine LeClaire, of Wisconsin Territory (now Iowa), Samuel Marsh, of New York, and Isaac Galland, of Illinois, or a majority of them, as commissioners to dispose of the lands, make deeds and pay over the proceeds of the land to the proper claimants, under the direction of the court.

This law was to be published once a week for three months in some newspaper published in each of the following places, viz: Burlington, St. Louis and Liberty, Missouri, Vandalia, and Alton, Illinois.

The act also provided that said commissioners should receive six dollars per day for their services, which, with all other expenses of the commissioners, were to be paid by sale of such quantity of land as might be sufficient to meet the demands, the same to be made under the direction of the court.

Under the provisions of this law, two of the commissioners were engaged most of their time in examining the titles of claimants for nearly a year, and until the 25th of January, 1839, at which time the legislature repealed the law. At that time there had been no sale of any land, and the commissioners had not received any compensation for their services and expenses.

To meet these demands, the repealing act provided "that the several commissioners appointed by and under that act, to set and take testimony, may immediately, or as soon as convenient, commence actions before the District Court of Lee county, for their several accounts, against the owners of said half-breed lands, and give eight weeks notice in the Iowa Territorial Gazette to said owners of such lands; and the judge of said District Court, upon the trial of said suits before it at its next term, shall, if said accounts are deemed correct, order judgment for the amount and costs to be entered up against the owners, and said judgment shall be a lien on said lands, and a right of redemption thereto. Said judgment when entered, shall draw interest at the rate of twelve per cent. per annum."

"The words, owners of the half-breed lands in Lee county, shall be a sufficient designation and specification of the defendants in said suits."

"All the expenses necessarily incurred in the discharge of their duties under the above named act, shall be included in their accounts."

"The trial of said suit or suits shall be before the court, and not a jury, and this act shall receive a liberal construction."

Under the provisions of this act, Edward Johnstone and David Brigham recovered judgments in the District Court of Lee county, against the "owners of the half-breed lands lying in Lee county, the former for twelve hundred and ninety dollars, and the latter for eight hundred and eighteen dollars. And on the 26th of November, 1841, there were executions issued on both of said judgments, one of which was levied as follows:

"December 1st, 1842, levied the within execution on the

half-breed Sac and Fox reservation in Lee county, I. T., commonly called the half-breed tract; advertised the same for sale January 1st, 1842; sold the above described tract of land; bought by H. T. Reed for the sum of \$2884.66, \$1762.66 to be endorsed in full satisfaction on the within execution. HAWKINS TAYLOR, Sheriff of Lee Co."

The other was levied as follows:

"Served the within execution on the half-breed tract of land situated between the Mississippi and Des Moines rivers, granted to the half-breeds of the Sac and Fox tribes of Indians; advertised the same for sale January 1st, 1842; sold the above described tract of land; bought by H. T. Reed for the sum of \$2888.66. HAWKINS TAYLOR, Sheriff of Lee Co."

On the 2d of January, 1843, William Stotts, who was the successor of Taylor, as sheriff of Lee county, executed to H. T. Reed, in accordance with the previous sales, a deed for the whole one hundred and nineteen thousand acres, describing it by metes and bounds, which deed was duly acknowledged and recorded.

The laws of the 16th of January, 1838, providing for settling the rights of the different claimants of the half-breed tract, was repealed before the provisions of it were carried into effect, and nothing was accomplished by it except a large bill of costs, made by the commissioners. But before this act was repealed, that part of the territory of Wisconsin which lay on the west side of the Mississippi river had been detached from that territory, and the territory of Iowa organized; and the legislature of Iowa had enacted a general partition law, in which it was provided that joint tenants, or tenants in common, of any land being entitled to the present possession thereof, might commence suits in the District Court of the county where the premises were situated, for a partition thereof.

Under the provisions of this law, on the 4th of April, 1840, Josiah Spaulding and twenty-two others filed a petition in the District Court of Lee county, for a partition of the half-breed tract among the respective owners; the petition named

Euphrosine Antaya, and several others, as defendants. In this petition it was claimed that the plaintiffs had a legal title to, and were seized in fee simple of, twenty-three and one-third full shares, and five thousand one hundred and thirty-five acres of land, in a tract commonly called the "half-breed tract." The petition described the situation and boundaries of the land, and alleged that it contained "one hundred and nineteen thousand acres of land. The share of each petitioner, with the name of the person from whom derived, was set forth in the petition, and in referring to the interests of the defendants named in the petition, stated that they and other persons, whose names and residences were unknown to petitioners, were tenants in common with plaintiffs in this tract of land."

A writ of summons was issued and returned by the officer, that the defendants were not found, and at the April term of the court of 1840, there was an order of publication made, as provided by law in such cases.

At the next October term it was entered of record that "on this day comes the petitioners, by Reed and Johnstone, their attorneys, and made proof of the publication of the notice ordered to be made at the April term."

This notice set forth that there was on file in the clerk's office, a petition asking for a partition of the half breed lands, and that the defendants and all others interested in the lands, were required to appear and answer said petition, or the proceedings had in the case would be binding and conclusive on them forever. This notice was published in the Iowa Territorial Gazette, at Burlington, for twelve consecutive weeks. At the October term several other persons were made parties to the suit, and time given the defendants to file their answer. At the April term of the court the defendants appeared and answered, except Euphrosine Antaya, and set forth their respective titles, and by consent the court tried the case, and entered up judgment of partition, which was as follows:

"In this case said defendants having appeared by their counsel respectively, and filed their answer to the petition,

stated and produced their proof, in some instances the original conveyances, and those of the petitioners by their counsel respectively, being by consent submitted to the court for adjudication and partition according to law, and the court being satisfied by sufficient proof that the publication required by the act entitled 'an act to provide for the partition of real estate,' has been duly made, and no other person, known or unknown, having appeared, or made any claim of objection to said petition and the said claims of the said parties, now before the court, petitioners and defendants, and their respective proofs and conveyances being by the court heard and considered, it is therefore, by the consideration of the court, and with the consent of said parties, this 8th day of May, A. D. 1841, ordered and adjudged that the claims of right of the said parties respectively, be the undivided portion of the land mentioned and described in said petition, amounting in all to one hundred and one equal portions, and that of those Marsh, Lee, and Delavan, trustees for claimants under the articles of association, dated October 22, 1836, filed in this case, and as trustees for persons interested under said articles, are entitled to forty-one shares."

The judgment then goes on to recite the undivided portions to which the defendants and the petitioners were respectively entitled, and ordered that they should be confirmed accordingly, and that partitions of the land should be made among the parties to the suit, petitioners and defendants, to the exclusion of all other persons. Samuel B. Ayers, Harmon Booth, and Joseph Webster were appointed commissioners to divide the lands into one hundred and one shares of equal value, and report the same to the court for confirmation. The commissioners proceeded to the discharge of their duties, and divided the land into shares as they had been directed, except certain islands in the Mississippi and Des Moines rivers, which they found could not be divided without prejudice to the owners, and therefore recommended that these islands should be sold, and made their report to the court at the October term of 1841, and, with the consent of the parties

interested, "the court ordered, adjudged and decreed that the report and all things therein contained be ratified and confirmed," and gave directions for the allotment of the several shares, all of which proceedings were duly entered on the records of the District Court.

These lands had been purchased from the half-breeds mostly by speculators and persons who did not reside in the territory, and but a very few of the real owners of the lands were in actual possession of them. The real owners not being present to take care of their interests, and protect them from intrusion, there was quite a large number of persons who squatted on these lands and held them by being in actual possession. There was already a general claim law of the territory, protecting the possession of those who might settle on lands; but at the convening of the legislature in December, 1839, almost the first thing they did was to pass a special act for the benefit of settlers on the half-breed lands.

This act provided, that any person who might purchase any part or parcel of that land known as the half-breed tract, and settle upon and make any improvements upon lands so purchased, or make any improvements without settling on them by tenants or hands, under a deed of purchase, or by color of title, and should, after the passage of the act, be ousted and dispossessed, should be allowed the price and value of all the improvements made by the occupant; and in case the parties interested could not agree as to the value of the improvements, and the amount was not paid to the occupant, it provided for legal proceedings and authorized a sale of property, the same as in other legal proceedings.

The next legislature, on the 31st of December, 1840, passed a supplementary act, by which it was provided, that it was lawful for any settler on the half-breed lands to select not exceeding one section of land in the tract, a part of which might be prairie and a part timber, if he had an interest in or title to the land, by paying the taxes on the same, on condition he should not interfere with the claims of any other person. It was further provided, that in order that the set-

tlar might hold his claim peaceably until the perfect title was ascertained and settled by due course of law, it was not deemed necessary for the settler to enclose more of the land than might suit his convenience, and his receipt for taxes duly paid was to be received as sufficient evidence of title and ownership, so as to authorize him to bring suit for any wrong or trespass committed upon his claim.

At the same session of the legislature, on the 13th of January, 1841, there was passed another act, by which it was provided, that the settlers on the half-breed lands who had paid taxes the previous year on their claims, should have all the rights and advantages under such previous tax title that were secured to those on taxes paid thereafter under the provisions of these laws.

At the next session of the legislature these several acts for the benefit of the settlers were so amended that the price and value of improvements made under color of title to the half-breed lands, allowed by the court, under the provisions of these several acts, should be and remain a lien upon the lands upon which such improvements were made, from the time of making such improvements until the price so allowed should be paid.

At a session of the legislature in June, 1845, there was another law enacted for the special benefit of the settlers on these lands. This act required, that in every real or personal action brought for the recovery of any of the half-breed lands, the following particulars should be complied with in order for the plaintiff to make out his case: If the plaintiff was a half-breed, or any person claiming title through or under a right acquired of a half-breed, he was required to show that there had been made a partition of the half-breed lands, of which he was admitted a party therein, and that all the provisions of the several partition laws had been complied with. That the plaintiff, if he derived title by any other way than by the decree of partition, should be required to show that the proceedings by which he acquired his title had been fairly and strictly in compliance with the law giving him such title.

And if the plaintiff claimed by virtue of a tax title, he should show that the provisions of the general law in relation to taxes had been substantially complied with.

It was provided on the part of the defendant in any such action, whatever might be the nature of his interest in the lands, or whether he was a mere occupant without any interest in the land, except his possessory rights, he should be permitted to show in evidence for the defeat of the plaintiff's claim, that there are still superior outstanding titles to that under which the plaintiff claimed, and that every defense which the holder of such outstanding claim or title might himself be permitted to prove, for the contravention of the plaintiff's title, might be relied upon by the defendant, who claimed no other than a possessory right to the land. And it was made the duty of the court to give this act such liberal construction as would most tend to the ascertainment of the real title to the land.

The provisions of this act did not meet with the approbation of the Governor, and he placed his veto upon it, but it was passed over the veto by a constitutional majority, and became a law.

In 1848 there was an amendment made to this act, which made it the duty of the court, in all actions of ejectment or right instituted for the recovery of the possession of any of the half-breed lands, to permit the defendant in such action to raise, on the trial before the jury, the question of fraud in the procuring the title adduced by the plaintiff, of whatever nature the title might be, which question of fraud was to be investigated by the judge.

At the same session, by another act, it was provided, that all persons being possessed of any lands, town lots or tenements, should be entitled to the full value of such improvements. That in any action for the recovery of any such real property, the jury before whom such suit was tried should, if they found a verdict for the plaintiff, also find and return in their verdict whether the defendant was possessed of any valuable improvement upon such property, which was to be

entered on record as a part of their verdict. That in case the jury should render a verdict that the defendant was in possession of valuable improvements, the clerk of the court was, within twenty days after the adjournment of the court, to issue a precipe to the sheriff, authorizing him to cause such improvements to be appraised; and it was made the duty of the sheriff to call an inquest of five disinterested householders, citizens of the county, who, after being qualified upon oath to impartially appraise the improvement at a fair value, were to make the appraisement, and return to the officer an estimate of the real value of the improvement; and it was made his duty to return the appraisement to the clerk of the court within thirty days from the time the writ issued, which was to be filed and made a part of the record. And in all these cases no writ of possession could issue until the amount of the appraised value of such improvement should be deposited with the clerk of the court for the use and benefit of the defendant, and it was the duty of the clerk to pay the money over to the defendant on demand.

These several acts were passed for the special benefit of the settlers on the half-breed tract, and no doubt in many respects worked advantageous to their interests; but they were not regarded to the extent designed by the legislature, for the Supreme Court afterwards decided, that "the act passed for the benefit of the settlers on the half-breed lands, in 1840, could not be interposed against a title confirmed by the judgment of partition in the case of Spalding and others against Antaya and others; said act became inoperative by its own limitation as soon as the title to said lands became settled by due course of law." And in regard to the law passed June, 1845, the Supreme Court decided, "that so far as that act was remedial in its character it should be enforced; but no feature in it can be considered valid and effectual which would have a tendency to destroy or even impair vested rights. Consequently any award, judgment or decree, which would have been evidence of title in the half-breed tract previous to the enactment of that law, cannot, by virtue

of anything it contains, detract from the conclusiveness of such evidence since its passage, in that no statute can constitutionally derogate a vested right."

The court also decided, that a judgment could not be obtained against the plaintiff for the value of improvements, if they exceeded the rents and profits; but that the occupying claimant should be allowed, as an offset for damages, any improvement he had made or purchased from others.

In these three different ways there were claimants to the lands in the southern part of Lee County, which for quite a number of years created much interest in the courts and before the public.

(To be Continued.)

MADISON COUNTY.

BY COLONEL HENRY J. CUMMINGS.

I cannot resist your kind request for me to give you a sketch of the early settlement of this county, and will forward the same to you as soon as I can gather the necessary information, and my time will permit.

Let me, however, give you a brief statement of the county as it is, for it will not be many years until the present time will be included in its "early history."

Madison county is reported by the census of 1867, to contain a population of 9,764 souls; but it has much increased since that time, the county having settled up very rapidly, especially the north part, on the line of the C. R. I. & P. R. R.

Madison county contains the following towns: Winterset, St. Charles, Peru and Webster. Webster rejoices in some half dozen houses, Peru in double that number. St. Charles is a thriving little town of some three hundred people. Winterset contains a population of about 1,700. It has just completed a large stone school house, capable of accommodating five hundred and fifty scholars. The city school district, which includes but very little more than the incorporation, had,

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